

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
Plaintiff) ORDER SETTING
) CONDITIONS OF RELEASE
v.)
) 4: 08 CR 3164
JOSE ANTONIO GARCIA,)
)
Defendant.)

IT IS ORDERED, pursuant to the accompanying Memorandum of Opinion, filing 18, and granting the defendant's motion to amend conditions, filing 19, the release of the defendant is subject to the following general conditions:

- (1) The defendant shall not commit any offense in violation of federal, state, or local law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel, and the U.S. attorney in writing before any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed as directed. The defendant shall next appear at (if blank, to be notified): AS ORDERED.

Transportation to and from court appearances shall be at the defendant's expense, unless the defendant cannot reasonably use ground transportation to attend due to insufficient advance notice of the scheduled hearing. Defendant's counsel shall notify defendant immediately upon learning of any scheduled or rescheduled court appearance.

IT IS FURTHER ORDERED that the defendant's release is subject to the conditions marked below:

(X) RELEASE ON BOND

(X) The defendant shall execute an unsecured appearance and compliance bond binding the defendant to pay the United States the sum of Ten Thousand dollars (\$10,000.00). In the event of a failure to appear as required, failure to comply with any of the conditions of this order, or to surrender as directed for service of any sentence imposed.

() The defendant shall execute a secured appearance and compliance bond binding the defendant to pay the United States the sum of _____ dollars (\$_____) in the event of a failure to appear as required, failure to comply with any of the conditions of this order, or to surrender as directed for service of any sentence imposed, which bond shall be secured by

() Defendant's promise to forfeit the following property:
_____ and the posting of indicia of ownership and other appropriate documents with the Clerk to permit foreclosure and transfer of title.

() The posting of the following amount of money posted with the Clerk:

(X) REPORTING REQUIREMENTS: The defendant shall:

(X) Truthfully report to the assigned United States Pretrial Services or Probation Officer ("Supervising Officer") as directed and comply with the officer's directions.

(X) Report as soon as possible to the supervising officer any contact with law enforcement personnel, including any arrest, questioning, or traffic stop.

(X) If directed by the supervising officer, notify third parties of risks that may be occasioned by the defendant's criminal record or personal history, and permit the supervising officer to make such notification and to confirm the defendant's compliance with notification requirements.

(X) SUPERVISION REQUIREMENTS: The defendant shall:

- (X) Submit to unannounced search of person, living premises, work area, and/or any vehicle owned or occupied by defendant, upon request of law enforcement or the supervising officer, for evidence of violations of this order.
- (X) Submit to the use of electronic monitoring or other location verification methods. Installation of monitoring equipment shall be at the time of release and shall be at the defendant's expense, payable in advance of the installation; monitoring fees shall be paid by defendant monthly. The defendant shall not disconnect, cut, alter, damage, destroy, or in any way interfere or tamper with the monitoring equipment or its proper operation.

(X) EMPLOYMENT: The defendant shall maintain full-time, verifiable employment, or obtain such employment as directed by the supervising officer or the Court.

(X) TRAVEL RESTRICTIONS: The defendant shall:

- (X) Obtain no passport, and surrender any existing passport to the supervising officer.
- (X) Not leave: Woodbury County, Iowa without the prior approval of the supervising officer or the court.

(X) RESTRICTED ACTIVITIES/CONTACTS: The defendant shall not:

- (X) contact, directly or indirectly, any persons who may be involved with the subject investigation or prosecution as a victim, potential witness, juror, or otherwise, including but not limited to the following persons: Vianney Romero Lagunas; Juan Robles; Giavanny Romero; Monica Robles
- (X) be with, associate with, or communicate with persons known or suspected to be or to have been involved in drug use or trafficking or weapons possession or weapons trafficking, without the prior approval of the supervising officer or the Court.
- (X) possess a firearm, destructive device, or other dangerous weapon.
- (X) drink an excessive amount of alcohol.
- (X) possess or use a narcotic drug or other controlled substances defined in 21 U.S.C. § 802 unless prescribed by a licensed medical practitioner.

(X) CHILD ACCESS/CONTACT RESTRICTIONS:

(X) The defendant shall not:

- (X) contact any person under the age of 18, directly or indirectly, including by correspondence, telephone, communication through third parties, e-mail, text-messaging, instant messaging, chat rooms, computerized messages, or any other electronic communication methods, except as permitted by the supervising officer. The defendant shall not enter onto the premises, travel past, or loiter near the residence, school, place or employment, or any other places frequented by these persons. In the event defendant is contacted by, has contact with, or unavoidably comes in close proximity to any person under the age of 18, the defendant shall report such incident immediately to the supervising officer.
- (X) loiter near schools, playgrounds, parks, video arcades, amusement parks, bus stops, or other places used or frequented by persons under the age of eighteen without the prior approval of the supervising officer.
- (X) be employed in or participate in any volunteer activity that involves contact with persons under the age of eighteen, without prior approval of the supervising officer.
- (X) obtain, possess, access, or view materials, in paper or other form (including computers), which include visual depictions of any person under the age of eighteen, or any image appearing to be such a person, clothed or unclothed, engaging in or simulating any sexually explicit conduct as defined in 18 U.S.C. 2256.

(X) The defendant shall:

- (X) submit to unannounced examinations of computer hardware, and software which may include retrieval and copying of all data from defendant's computer. This also includes seizure of such equipment, if necessary, for purposes of monitoring compliance with conditions of release.
- (X) authorize the release to the supervising officer of confidential information from his telephone and cable providers, internet services providers, and any wireless computer services, and further, authorize unrestricted communication to and from such providers by the supervising officer.

(X) EVALUATION AND TREATMENT: The defendant shall:

- (X) obtain an evaluation by a licensed sex therapist within 15 days of his release, and shall comply in good faith with the evaluator's recommendations as directed by the supervising officer.
- (X) pay all or a portion of the evaluation in an amount and on a schedule to be arranged by the supervising officer.
- (X) sign a release authorizing the supervising officer to obtain copies of the evaluator's reports and recommendations. Copies of the evaluation reports and recommendations shall be given to all counsel and the court.

(X) RESIDENCE:

(X) The defendant shall reside at:

(X) home, subject to the following restrictions:

- (X) **Curfew.** Defendant shall be physically present in the residence every day from 6:00 p.m. to 6:00 a.m., except as otherwise directed by the supervising officer to attend employment; education; religious services; medical, substance abuse treatment, or mental health treatment; attorney visits; court appearances and court-ordered obligations; or other activities pre-approved by the supervising officer.

(X) MISCELLANEOUS:

(X) The defendant shall pay all court-ordered child support obligations.

ADVICE OF PENALTIES AND SANCTIONS

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of any crime while on pre-trial release may result in an additional sentence to a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to five years of imprisonment, and a \$250,000 fine or both to intimidate or attempt to intimidate a witness, victim, juror, informant or officer of the court, or to obstruct a criminal investigation. It is also a crime punishable by up to ten years of imprisonment, a \$250,000 fine or both, to tamper with a witness, victim or informant, or to retaliate against a witness, victim or informant, or to threaten or attempt to do so.

If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than ten years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both;
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in addition to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

ACKNOWLEDGMENTS OF DEFENDANT AND COUNSEL

(X) The defendant shall sign this order below, acknowledging that s/he agrees to abide by all conditions herein and has been advised by his/her attorney of the "Penalties and Sanctions" section of this order.

OATH OF DEFENDANT

I hereby swear or affirm that: (1) I have been advised by my attorney of each of the conditions of my release as stated in this order; (2) that I will truly and faithfully abide by each and all of these conditions; (3) that I have been advised by my attorney of the "Penalties and Sanctions" portion of this order and I understand those provisions; and(4) that my agreement to abide by these conditions is my voluntary act and deed.

Date

Defendant

(X) Defendant's attorney shall sign below, acknowledging that s/he has reviewed the conditions of release and the "Penalties and Sanctions" portion of this order with the defendant, and also reviewed the conditions with the third party custodian named above, who has agreed to monitor the defendant in accordance with these conditions, and to notify the supervising officer immediately should the defendant fail to abide by any of them. Upon receiving these assurances and signatures, defendant's counsel shall return the order to the court.

CERTIFICATION OF ATTORNEY

I hereby state and declare that I am the attorney for the defendant herein, and I have reviewed with the defendant and third party custodian each of the conditions of release herein. I have advised the defendant of the "Penalties and Sanctions" portion of this order, and the defendant has indicated his/her understanding of such provisions and has promised to obey this order. I further have reviewed such conditions and the "Penalties and Sanctions" portion of this order with supervising staff at the treatment facility identified above.

Defendant's Attorney

DIRECTIONS TO UNITED STATES MARSHAL

Release on own recognizance

() The United States marshal is ORDERED to release the defendant after processing.

Release on bond

() The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions of release.

Release to treatment/third party custodian/home

() The United States Marshal is ordered to keep the defendant in custody until notified that this order has been signed by defendant, defendant's counsel, the court and, if required, the third-party custodian or supervising officer. In the event the defendant is being released to reside in a group residential facility or to attend inpatient treatment, the supervising officer shall notify the U.S. Marshal of the appointed time of arrival there, and defendant shall be released as directed by the court at such time as there remains sufficient time to travel to the treatment facility and timely arrive, but with as little excess time as is practicable under the circumstances.

Defendant in state custody

() The United States Marshal is ORDERED to take the defendant into custody upon his release from the custody of (correctional authority). The defendant shall then promptly be produced before the appropriate judicial officer for hearing on conditions of release or detention.

Date: December 18, 2008

s/ David L. Piester
United States Magistrate Judge